

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No Case No. S-2548

PETITION OF FREDIS MENDEZ DIAZ

OPINION OF THE BOARD

(Public Hearing Date: December 6, 2002)
(Effective Date of Opinion: May 2, 2003)

Case No. S-2548, Petition of Fredis Mendez Diaz is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an existing accessory apartment.

Pursuant to the authority contained in Section 59-A-4.125 of the Montgomery County Code, the Board referred the application to the Hearing Examiner for Montgomery County to conduct a public hearing. The hearing was held on December 2, 2002 Mr. Diaz testified. Housing Code Field Supervisor Kevin Martell from the Department of Housing and Community Affairs (DHCA) also testified about his inspection of the subject property. A report of his inspection is entered in the record as Exhibit No. 11. On March 6, 2003 the Hearing Examiner issued a Report and Recommendation for approval of the special exception.

The subject property is Lot 1, Block M, Fairway Subdivision, located at 10117 Hereford Place, Silver Spring, Maryland, in the R-60 Zone.

Decision of the Board:	Special exception granted, subject to Conditions enumerated below.
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The Board has carefully considered the Hearing Examiner's Report and Recommendation. At its Worksession on March 19, 2003, the Board voted to adopt the Report and Recommendation and **grant** the special exception subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record, including, but not limited to Exhibit Nos. 3, 4, and 5, to the extent that such

evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.

2. Petitioner shall comply with the provisions of the County Code pertaining to accessory apartments, including accomplishment of the corrections noted in the DHCA inspection report [Exhibit No. 11].

3. Based upon the provisions of the Montgomery County Housing Code and upon its 400 square feet of habitable space, and provided that all necessary corrections take place, [See Exhibit No. 11] the accessory apartment is suitable for occupancy by no more than two unrelated persons or a family of four related persons.

4. Occupants work van(s) and at least three of the occupants' vehicles shall be parked in the driveway, if at the subject property, after 6 PM, and Occupants shall request visitors to park in the driveway or in front of the subject property.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 2nd day of May, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.